

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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GREGORY KELLY,

Plaintiff,

v.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, *et al.*,

Defendants.

2:12-cv-02074-LRH-CWH

ORDER

Before the Court is Plaintiff Gregory Kelly's ("Kelly") Motion for Clerk's Entry of Default Pursuant to Federal Rule of Civil Procedure 55(a). Doc. #133.¹ Defendants John Campbell ("Campbell") and Christopher Garcia ("Garcia") filed a Response (Doc. #134), to which Kelly replied (Doc. #140).

Pursuant to Federal Rule of Civil Procedure 55(a), a clerk's entry of default is appropriate when "a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules" Kelly asserts that by failing to answer his Amended Complaint, Campbell and Garcia are subject to default. *See* Doc. #133. The Court disagrees. Here, Campbell and Garcia filed a Motion to Dismiss, evidencing their intent to defend against Kelly's claims. *See* Doc. #106. The Court finds Campbell and Garcia's action in this

¹ Refers to the Court's docket number.

1 regard to fall squarely within the ambit of the phrase “otherwise defend.” *See Rashidi v. Albright*,
2 818 F. Supp. 1354, 1355-56 (D. Nev. 1993) (“[i]t is undisputed that a motion challenging a
3 complaint for failure to state a claim upon which relief can be granted falls squarely within the
4 ambit of the phrase ‘otherwise defend’”). Accordingly, clerk’s entry of default pursuant to Federal
5 Rule of Civil Procedure 55(a) is not warranted.

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7 IT IS THEREFORE ORDERED that Kelly’s Motion for Clerk’s Entry of Default (Doc.
8 #133) is DENIED.

9 DATED this 6th day of May, 2014.

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12 LARRY R. HICKS
13 UNITED STATES DISTRICT JUDGE
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